

CHAPTER 3

AGENCY CERTIFICATION FOR CONSTRUCTION PROCUREMENT AND CERTIFICATION FOR CODE REVIEW

CHAPTER 3.1

CERTIFICATION FOR CONSTRUCTION PROCUREMENT

3.1.1 RELATED STATUTORY AUTHORITY

1. SC Code § 11-35-540 permits the Board to promulgate regulations, to approve agencies' internal operational procurement procedures, and to audit and monitor agencies' procurement procedures.
2. SC Code § 11-35-845 permits agencies with total management capabilities to oversee the administration of permanent improvement projects with the Office of State Engineer serving as an audit function.
3. SC Code § 11-35-1550 authorizes any agency to conduct its own procurement of \$50,000 or less in actual or potential value under its own authority in accordance with the procurement code.
4. SC Code § 11-35-1210 permits the Board to certify agencies to make direct procurements not under term contract and within assigned dollar limits.
5. SC Code § 11-35-1220 permits the Chief Procurement Officers to require that agencies report all public procurements on forms they prescribe.
6. SC Code § 11-35-1230 requires the office designated by the Board for that purpose to audit and provide fiscal reporting.
7. SC Code § 11-35-3220 requires the State Engineer to approve all design professional selections except those procured in response to emergency or sole source declarations or for contracts of \$25,000 or less.
8. SC Regulation 19-445.2015 defines unauthorized procurements and the process for terminating or ratifying such procurements.

3.1.2 DELEGATION OF CONSTRUCTION PROCUREMENT AUTHORITY

All Agencies have a basic level of certification of \$50,000 permitting them to procure construction services valued at \$50,000 or less under their own authority. Moreover, the Materials Management Officer may recommend to the Board that a Agency receive the authority to make direct procurements above the Basic level of \$50,000. Authority to authorize change orders within certain limits may be a part of this recommendation. For construction procurement certification in excess of \$50,000, the Materials Management Office evaluates the Agency for knowledge and performance related to administration of the Procurement Code and the General Conditions of the Construction Contract.

Construction procurements within the Agency's construction procurement certification are the sole responsibility of the Agency. All procurement activities under a Agency's certification must adhere to all laws and regulations governing construction procurement and to the requirements of this Manual. Certified Agencies may only procure construction using OSE approved contract forms. OSE must monitor and approve construction procurements exceeding the Agency construction certification. OSE and MMO may perform audits to monitor compliance with these standards.

3.1.3 CERTIFICATION REQUEST PROCEDURES

A. REQUEST FOR CERTIFICATION EXCEEDING CURRENT CERTIFICATION

1. Agencies desiring construction procurement certification in excess of their current certification must submit a written request to the Materials Management Officer. The Agency should submit their request

well in advance of expiration of their current certification. The request must contain the following information:

- a. The proposed certification level;
 - b. The Agency's building program over the last five years;
 - c. The Agency's building program projected for the next five years;
 - d. A list (including the dollar value) of initial design and construction procurements and the contract amendments and change orders that the proposed increased certification level would have allowed on projects constructed during the past five (5) years;
 - e. The individual in responsible charge of construction projects
 - f. The Agency's organization and staffing (current and proposed, if different) for the management of construction projects and the support available to the staff; and
 - g. The resumes of both procurement and technical staff members showing relevant experience and current registrations, licenses, and certifications.
2. The individual in responsible charge of construction projects must have at least one of the following certifications:
- a. South Carolina licensed Architect or Professional Engineer with significant experience in building design and construction; or
 - b. Other building construction experience acceptable to the OSE.

B. EVALUATION OF THE REQUEST FOR INCREASED CERTIFICATION

Audit and Certification will audit the Agency's internal procurement practices and OSE will review the Agency's construction project execution practices and the two will make recommendations based on the following criteria:

1. Demonstrated need for the certification;
2. Estimated number of additional construction-related procurements that the requested certification level would allow;
3. Past audit reports;
4. Evaluation of the Agency's adherence to the procurement code, related regulations, and this Manual with an emphasis on competitive procurement methods; and
5. Qualifications of the staff assigned to the procurement process.

3.1.4 AUDIT AND RECORD RETENTION REQUIREMENTS

For Agencies procuring construction related services within the certification limits granted by the Board, both Audit & Certification and OSE perform an audit function.

The Agency must make all procurement records available to the Attorney General, OSE, and Audit & Certification. Agencies must retain and dispose of procurement records on all projects in accordance with guidelines approved by the Department of Archives and History.

3.1.5 IN-HOUSE CONSTRUCTION PROJECTS

In-house construction projects are projects where the Agency uses its own forces to supply all labor and the Agency does not use any outside contractor or subcontractor. All in-house projects must comply with the cost limits and licensing requirements of the SC Contractors' Licensing Board.

The Agency must use the actual cost of both labor and materials to determine if the project exceeds the Agency construction certification and to determine the review and approval requirements by OSE. If individual procurements of construction materials or equipment exceed the Agency goods and services certification, the Agency must make those procurements through the State Procurement Office or through a state contract. The Agency may obtain further interpretation on these requirements from the State Procurement Office.

3.1.6 CERTIFICATION VIOLATIONS

Any procurement that violates an Agency's certification limits is an unauthorized procurement that the Agency must terminate or ratify in accordance with Regulation 19-445.2015.